Office of Medicaid
BOARD OF HEARINGS

Appellant Name and Address:

[redacted]

Appeal Decision:	Denied	**Appeal Number:**	2305752
Decision Date:	10/10/2023	**Hearing Date:**	08/31/2023
Hearing Officer:	Mariah Burns	**Record Open to:**	

Appearance for Appellant:
Pro Se

Appearance for MassHealth:
Sarah Prado, Maximus Premium Assistance; Cathy Tobin, Tewksbury MassHealth Enrollment Center

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171

APPEAL DECISION

Appeal Decision:	Denied	**Issue:**	Premium Assistance; Basic Benefit Level
Decision Date:	10/10/2023	**Hearing Date:**	08/31/2023
MassHealth's Rep.:	Sarah Prado, et. al	**Appellant's Rep.:**	Pro Se
Hearing Location:	Remote	**Aid Pending:**	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated July 6, 2023, MassHealth terminated the appellant's Premium Assistance payments. *See* 130 CMR 506.012 and Exhibit 1. The appellant filed this appeal in a timely manner on July 14, 2023. *See* 130 CMR 610.015(B) and Exhibit 2. Termination of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth terminated the appellant's Premium Assistance payments.

Issue

The appeal issue is whether MassHealth acted properly in terminating the appellant's Premium Assistance payments.

Summary of Evidence

The appellant is an adult under the age of 65 who resides in a household of four with her three minor children, one of whom currently receives MassHealth CommonHealth. She appeared at

hearing by telephone. MassHealth was represented telephonically at hearing by a worker from Maximus, which operates MassHealth's Premium Assistance program and a worker from the Tewksbury MassHealth Enrollment Center. The following is a summary of the testimony and evidence presented at hearing:

MassHealth reported that the appellant had been receiving Premium Assistance for a number of years. The most recent premium payments were $559.82 monthly for a United Healthcare plan sponsored by the appellant's employer. The appellant was using a Health Reimbursement Arrangement (HRA) with her employer to ensure that the plan met the basic benefit level as required by the MassHealth regulations.

On July 23, 2023, MassHealth received notice from the appellant's employer that the plan was being changed, effective July 1, 2023, from United Healthcare to a Cigna plan. That Cigna plan had annual deductibles of $3,000 for an individual and $6,000 for a family. The MassHealth representative from Maximus further reported that Maximus was no longer allowing members to use HRAs to reduce their deductibles in order to comport with the MassHealth regulations. That policy change went into effect on January 1, 2023, but members whose employer sponsored insurance (ESI) plans that were already approved were exempted from this change. Because the appellant's ESI plan changed in July, she was no longer able to benefit from Maximus's deviation from the regulations. The appellant last received a Premium Assistance payment in July 2023.

The appellant reported that she never received any notice of this change in policy. She expressed concern about the fairness of such a change, indicating that she could have and would have advocated with her employer to choose a different insurance plan if she had known that the Cigna plan would no longer meet the basic benefit level to qualify for Premium Assistance. The MassHealth representative from Maximus confirmed that no notice was sent out and was unsure why that was the case. She confirmed that such a notice would have been issued by Maximus.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant is an adult under the age of 65 who resides in a household of four with her three minor children, one of whom is a MassHealth CommonHealth recipient. Testimony, Exhibit 1, Exhibit 4.

2. Prior to the notice at issue, the appellant had been receiving Premium Assistance payments in the amount of $559.82 per month for a United Healthcare employer sponsored insurance plan. Testimony.

3. On June 23, 2023, MassHealth received notice that the appellant's employer would be

switching the appellant to a Cigna insurance plan with annual deductibles of $3,000 for an individual and $6,000 for a family. Testimony, Exhibit 2.

4. The appellant was previously using an HRA with her employer to reduce the deductible for her ESI to ensure the plan met MassHealth's basic benefit level. Testimony.

5. Effective January 1, 2023, Maximus changed its policy to conform to the MassHealth regulations and no longer allows members to use HRAs to reduce their deductibles. Testimony.

6. No notice was sent by Maximus to inform members of this policy change. Testimony.

7. The appellant's last Premium Assistance payment was received in July 2023.

Analysis and Conclusions of Law

Through its Premium Assistance program, MassHealth provides financial assistance to eligible members that have access to private health insurance, to help cover the cost of their health insurance premiums. *See* 130 CMR 506.012(C). Eligibility for this benefit is based on "the individual's coverage type and the type of private health insurance the individual has or has access to." *See* 130 CMR 506.012(C). Once enrolled, MassHealth issues "premium assistance payments" to the policyholder of the plan. The PA payment is the amount MassHealth contributes to the cost of health insurance coverage for the member. *See* 130 CMR 501.001.

MassHealth establishes the following criteria to determine eligibility for premium assistance:

> (B) Criteria. MassHealth may provide a premium assistance payment to an eligible member when all of the following criteria are met.
>
> (1) The health insurance coverage meets the Basic Benefit Level (BBL) as defined in 130 CMR 501.001: *Definition of Terms.* Instruments including but not limited to *Health Reimbursement Arrangements*, Flexible Spending Arrangements, as described in IRS Pub. 969, or Health Savings Accounts, as described at IRC § 223(c)(2), *cannot be used to reduce the health insurance deductible in order to meet the basic-benefit level requirement.*
>
> (2) The health insurance policy holder is either
>
> (a) in the PBFG; or
>
> (b) resides with the individual who is eligible for the premium assistance benefit and is related to the individual by blood, adoption, or marriage.
>
> (3) At least one person covered by the health-insurance policy is eligible for MassHealth benefits as described in 130 CMR 506.012(A) and the health-insurance policy is a policy that meets the criteria of the MassHealth coverage

type for premium assistance benefits as described in 130 CMR 506.012(C).[1]

130 CMR 506.012(B) (emphasis added).

In this appeal, MassHealth argues that Appellant does not qualify for premium assistance payments because her ESI plan no longer meets the criteria specified in subsection (B)(1), above. Specifically, MassHealth determined that Appellant's ESI plan does not meet the basic benefit level (BBL) because his annual deductible exceeds the maximum limit. MassHealth defines the BBL as follows:

> benefits provided under a health insurance plan that include a broad range of medical benefits as defined in the minimum creditable coverage core services requirements in 956 CMR 5.03(1)(a); provided that the annual deductible and the annual maximum out-of-pocket costs under that plan do not exceed the maximum amounts the Massachusetts Health Connector sets for deductibles and out-of-pocket costs in order for a plan to be considered minimum creditable coverage, as set forth at 956 CMR 5.03(2)(b)2 and 3, and 956 CMR 5.03(2)(c), respectively, and as may be illustrated in administrative bulletins published by the Massachusetts Health Connector, and as are in effect on the first day coverage under that plan begins.

130 CMR 501.001.

Under this definition, the inquiry for determining whether a plan meets the BBL is two-fold. First, the plan must cover the following "core services" enumerated in 956 CMR 5.03(1)(a), as follows:

> (1) …
>
> (a) A health benefit plan provides core services and a broad range of medical benefits, in accordance with at least the minimum standards set by state and federal statutes and regulations governing the particular health benefit plan. "A broad range of medical benefits" shall include, at a minimum, coverage for:
>
> 1. Ambulatory patient services, including outpatient, day surgery and related anesthesia;
> 2. Diagnostic imaging and screening procedures, including x-rays;
> 3. Emergency services;
> 4. Hospitalization (including at a minimum, inpatient acute care services which are generally provided by an acute care hospital for covered benefits

[1] Subsection (C) of 130 CMR 506.012 includes employer sponsored insurance (ESI) as one of the enumerated qualifying policy types.

in accordance with the member's subscriber certificate or plan description);
5. Maternity and newborn care, including prenatal care, post-natal care, and delivery and inpatient services for maternity care;
6. Medical/surgical care, including preventive and primary care;
7. Mental health and substance abuse services;
8. Prescription drugs;
9. Radiation therapy and chemotherapy.

956 CMR 5.03(1)(a).

In this case, MassHealth does not allege that Appellant's insurance plan stopped covering the core services cited above.[2] Rather, MassHealth's decision to terminate Appellant's PA benefit is based solely on an increase in the deductible amount. The central issue on appeal, therefore, turns to the second inquiry posited under the BBL definition and whether the appellant's deductible is in line with the regulations set by the Health Connector. *See* 130 CMR 501.001.[3]

The Health Connector calculates minimum creditable coverage pursuant to 956 CMR 5.03(2)(b)(2) and (3). The regulation provides as follows:

> (2) …
> (b)…2. any Deductible(s) for in-network Covered Services that are provided as part of the plan benefits shall not in combination exceed $2,000 for an individual and $4,000 for a family;
>
> 3. the dollar amounts for individuals specified in 965 CMR 5.03(2)(b)2. shall, unless the Connector Board establishes otherwise for a given calendar year, be adjusted each year by an amount equal to the product of that amount and the premium adjustment percentage for a calendar year as determined by the United States Secretary of Health and Human Services pursuant to 42 U.S.C. § 18022(c)(4). Such amounts are typically published by the Secretary in the annual Notice of Benefit and Payment Parameters regulations. If the amount of any adjustment is not a multiple of $50, such

[2] MassHealth previously approved Appellant's ESI plan for premium assistance payments based on a determination that it met the BBL. Absent any evidence to indicate otherwise, it is presumed this part of her insurance plan continues to comply with 956 CMR 5.03(1)(a).
[3] It is important to note that the definition of BBL underwent a regulatory change in July 2023. Under that definition, the appellant may have qualified for Premium Assistance for the month of July, but her eligibility would change effective in August. As she received payment in July 2023, his eligibility as of August is most relevant to this appeal. MassHealth could be entitled to recoup any premiums paid for which the appellant was not eligible. *See* 130 CMR 610.032(A)(4).

> adjustment shall be rounded down to the next lowest multiple of $50. The dollar amounts for a family specified in 956 CMR 5.03(2)(b)2. shall be increased each year to an amount equal to twice the amount in effect for an individual, as adjusted pursuant to 956 CMR 5.03(2)(b)3…

According to Health Connector Administration Information Bulletin 02-22, the deductible limits pursuant to 956 CMR 5.03(2)(b) are $2,850 for individuals and $5,700 for families, as the MassHealth representative from Maximus reported at hearing.[4] The appellant's ESI plan contains a deductible of $3,000 for an individual and $6,000 for families, which exceeds this limit.

The MassHealth representative reported at hearing that Maximus was previously not abiding by the portion of 130 CMR 506.012(b)(1) that prohibits the use of Health Reimbursement Accounts (HRAs) to reduce the deductible to qualify for Premium Assistance. She indicated that, as of January 1, 2023, the company's policy changed to accurately reflect the requirements of the regulation, but no notice was given to MassHealth members of this change. The appellant's representative argued that this was unfair, as she had been using an HRA for years and did not know that, when her employer changed insurance plans, she would no longer have that option. She expressed a possibility that she could have advocated for herself had she known that the policies had changed.

Although the appellant raises a sympathetic point, the Fair Hearing Rules do not authorize hearing officers to issue decisions based on fairness or equity. *See* 130 CMR 610.082. A hearing officer's decision must be rendered in accordance with the law and may be based only upon "evidence, testimony, materials, and legal rules presented at hearing, including the MassHealth agency's interpretation of its rules, policies and regulations." *Id.* An argument of fairness is better served in the courts. Neither the MassHealth statutes and regulations nor any subsequent case law that this hearing officer was able to uncover contemplate a third-party contractor failing to abide by MassHealth regulations and then making a policy change to correct itself to conform with the law. Certainly *Haley v. Commissioner of Public Welfare*, 394 Mass. 466, 474 (1985), prohibits an agency from "rewrite[ing] a position it had previously taken when the interpretation is not supported by the statute." However, in a situation such as this where the rewritten position is to conform with the law, there appears to be no basis for a hearing officer to overturn an adverse decision resulting from the change. As such, MassHealth was within its discretion to terminate the appellant's Premium Assistance effective August 2023. The appeal is thereby DENIED.

Order for MassHealth

None.

[4] https://www.mahealthconnector.org/wp-content/uploads/rules-and-regulations/AdminBulletin02-22.pdf

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Mariah Burns
Hearing Officer
Board of Hearings

cc:
MassHealth Representative: Sylvia Tiar, Tewksbury MassHealth Enrollment Center, 367 East Street, Tewksbury, MA 01876-1957, 978-863-9290